AMERICAN RAILROAD RATES. By Walter Chadwick Noyes. Boston: Little, Brown & Company. 1905. pp. 277. 8vo.

The title-page of this work announces that the writer is a judge, president of a railroad and author of a well-known legal treatise. Scarcely less wide in range than the versatility of the author's talents is the selection of topics he has discussed. The first three chapters sketch in broad lines the established principles of economic theory which govern the adjustment of railway rates. Then follows a discussion of certain practical problems in the management of railroads. One chapter contains an excellent description of the method by which in actual practice the various articles of traffic are classified and tariffs adjusted. In another chapter are explained and illustrated the conditions which give rise to the practice of discrimination. Perhaps of most immediate interest to the lawyer is the running commentary made upon the legal questions raised by the various phases of rate-making discussed, which culminates in two special chapters entitled: "State Regulation of Rates" and "Federal Regulation of Rates." The legal duty of the railroad to the public is briefly discussed. The principal provisions of the Interstate Commerce Act and the leading decisions in interpretation thereof, are summarized, and the practical workings of the act criticised. After the passage of the act, the author asserts, "pooling was substantially abandoned," but discrimination has persisted in times of business depression when traffic was light, and no adequate relief is provided against unreasonable rates. The volume concludes with a temperate and well-considered inquiry into the expediency and constitutionality of federal regulation: "any effective measure of relief requires the progressive action of two tribunals: (1) the judicial question of the reasonableness of the rate complained of . . . (2) If a rate be judicially found to be unreasonable, the legislative power of making a new rate should be administered." The reasons for adopting this mode of procedure can, however, only be considerations of practical efficiency. Undoubtedly the determining in a controversy between parties litigant the reasonableness of an existing rate is a judicial function. Nevertheless, Congress has the power to create a commission whose duty shall be to ascertain the reasonableness of existing rates in order that their findings of fact may be used as a criterion in fixing a rate for the future. Judge Noyes maintains that inasmuch as the fixing of a reasonable rate for the future is a legislative function, any provision for a judicial review of the action of a commission in order to determine whether the rate fixed by the commission is reasonable, requires the exercise of non-judicial powers by the courts, and is unconstitutional. The importance of this contention is chiefly to enjoin caution in the choice of the language defining the judicial power of review. To determine whether limiting the charge of the carrier to a maximum rate fixed by a commission, deprives the carrier of property without due process of law, is conceded to be a judicial function. The test of the constitutionality of such a rate is whether its enforcement will prevent the company from earning a reasonable profit on the item of business affected. See *Railroad Commission Cases*, 116 U. S. 331; *Chicago, etc., Co.* v. *City of Chicago*, 199 Ill. 484, 547; 199 *ibid.* 579, 642. And it is not improbable that this same test may be adopted as the rule to guide the commission in determining what shall be a reasonable future rate, with the result that a review, in the strictest sense judicial, would be both common and necessary.

A TREATISE ON THE LAW OF DOMESTIC RELATIONS. By Joseph R. Long. St. Paul: Keefe-Davidson Company. 1905. pp. xiv. 455. 8vo.

"This book," says the author in his preface, "has been written to supply a need which I have personally felt as a teacher of law. In writing it I have kept my own students constantly in mind, and have endeavored to set forth those principles of the law which I thought they ought to know, in such a manner as to be readily grasped by them." The preface concludes with the hope that the book may not be wholly without value to the practitioner. The author has apparently written in accordance with his expressed purpose. As

a book for the lawyer in search of argument or authority, the work is not helpful. The citations are far from exhaustive and the analytical discussion of underlying principles is almost entirely omitted. The book consists mainly of a summary of the rules of law which govern the relations of the members of a family toward one another. While the disabilities of married women and infants, and other matters usually treated in more comprehensive treatises upon domestic relations, are of necessity touched upon incidentally, they are dismissed as briefly as their relation to the subject will permit. The rules of law are stated concisely and in the main clearly, but without much attempt at illustration or elaboration of detail. Theoretical discussions of the law, the weighing of reasons for or against the acceptance of a principle, and criticisms of the decisions as they stand are for the most part wanting. In fact, the book seems in most respects best adapted for use as a text-book in a law school in which the text-book method of instruction is employed, and in which the instructor intends to rely upon the class-room work for the purpose of supplying both the reasons underlying the settled law and the more particular applications of its principles.

One notes a few propositions which seem as they are stated to be somewhat misleading. For instance, in § 43 one reads that marriages between citizens of a state which have been declared by a state statute to be void, are held void although contracted in another state in which they are not prohibited. This seems to be an over-statement. A void marriage is no marriage at all. But a marriage contracted by citizens of Ohio in Kentucky in order to avoid the laws of Ohio, if valid in Kentucky, will be recognized as valid by all states other than Ohio. Again, in § 142 it is stated that the parties themselves are bound by a decree of divorce fraudulently obtained upon the voluntary appearance of both in a proceeding in a jurisdiction where neither had a domicile, and that they cannot avoid the decree in a collateral proceeding afterwards instituted in the state of their domicile. The author notes in the appended citations that Andrews *v.* Andrews (188 U. S. 14) is to the contrary. Inasmuch as the final decision as to the binding effect of a decree rendered in another state lies with the United States Supreme Court, it would seem that there is a patent inconsistency in the author's statements as to the law and as to the holding of Andrews *v.* Andrews. In the same section the author maintains that where a person goes to a state and resides there for the purpose of procuring a divorce, the divorce is invalid, as the plaintiff does not comply with the rule requiring him to have a *bona fide* domicile in the state in which suit is brought, and cites Andrews *v.* Andrews for the proposition. If it is intended to be laid down that a person who goes to a state and resides there with the intention of making it his home cannot procure a valid divorce in that state in case his motive in so doing was to take advantage of its divorce laws, it may well be doubted whether the proposition is law. Certainly Andrews *v.* Andrews goes rather on the ground that no domicile was acquired in South Dakota because of a lack of real intention to make a home there. Notwithstanding the defects of the work, however, it should prove useful to the elementary student as a concise and for the most part accurate statement of the law.

H. LEB. S.

THE LAW OF CRIMES. By John Wilder May. Third Edition, edited by Harry Augustus Bigelow. Boston: Little, Brown, & Company. 1905. pp. liv, 366. 8vo.

The present volume, which is a third edition of Mr. May's well known work on Criminal Law, introduces even more extensive changes than did the second edition by Prof. J. H. Beale, Jr. One hundred and fourteen new sections and parts of sections have been added. The pages of its text number three hundred and thirty-two as against three hundred and twenty-one in the second, and two hundred and twenty-eight in the first edition, while the number of cases cited has been increased, chiefly by the addition of the late authorities, from some eight hundred in the first, and two thousand in the second, to over thirty-six